(2)

031657 JUN 16 2004

No: __-____

IN THE

Supreme Court of the United States

Andrew Bestor

Petitioner

v.

Joseph Lieberman et al.

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals for the District of Columbia

PETITION FOR WRIT OF CERTIORARI

Andrew S. Bestor appearing *pro se*
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Washington D.C. 20003
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Questions

Appellant Bestor seeks to avert reassignment of his case from one judge to another and claims the law is not clear on 'reassignment' of cases in the District of Columbia, both whether or not reassignment is at all an appealable decision, and, if reassignment is appealable, when the appropriate point at which to appeal the reassignment would be.

1. As has been famously observed, apparently originally by Lincoln, "the Constitution is not a suicide pact." In extreme *enough* circumstances presumably all laws, customs, and rules however sacred are appealable; the question is whether the 'urgency,' 'harm,' and 'likelihood' here are sufficient to meet the *enough.* Bestor offers a number of unique circumstances which alone or in combination should suffice to immediately tip the balance in his favor [averting the reassignment].

2. The issues related to the reassignment are so completely disparate from the issues between the plaintiff and the defendants,
making Bestor wait to appeal the reassignment until after his Complaint has potentially been dismissed represents an unfair extra barrier to his cause on appeal [cause for averting the reassignment].

3. Can at least occasional if not continual acts of torture as defined in the District of Columbia under *Price v. [Libya]* 294 F.3d 91-93 ("acts of a certain gravity".... extreme, deliberate, and unusually cruel practices) extend the 28 USC 1291 jurisdiction of the Court of Appeals [allowing the possibility of alternative supervision over the District Court in making a discovery finding *at least related to the reassignment*].

Parties

Andrew S. Bestor is the Plaintiff, and Joseph I. Lieberman and Edward M. Kennedy are the Defendants.

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*	**Assignment to Judge Richard Roberts at time of** filing *Bestor v. United States* 02 0279 Bestor sought the District Court's assistance both in imaging the neuroprosthetic and in contacting a subject matter expert – Dr. John Carney at the Defense Advanced Research Projects Agency [DARPA].	4
*	**Judge Roberts dismissed the previous case for** lack of subject matter jurisdiction June 05 2002, and denied a motion for Rehearing and to correct the record on August 05 2002. [M]otion to compel Dr. Carney's assistance denied as moot **[Appendix 2].**	4

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*	**Kennedy and Lieberman [defendants here] only** acted against Bestor [attacking Bestor with electromagnetic radiation] after Roberts dismissed Bestor's complaint versus United States.	5
*	**New case assigned to Judge Urbina in the** District Court, only to be reassigned to Judge Roberts who dismissed Bestor's previous efforts. Bestor immediately tried to defeat the reassignment with motions.	6
*	**Roberts granted enlargement 9 9/25/03 without** answering Bestor's previously filed motions or oblique objection.	6
*	**Roberts had multiple opportunities in three different cases over a two year period to grant orders for imaging the neuroprosthetics; Roberts never has.**	6
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*	**Bestor suffers many hurts frm electromagnetic** radiation .... including induced pain, blurred vision, receding gum lines and other typical manifestations of radiation.... but the most serious issues are impossible to quantify – plaque build-up in the arteries [definite] and brain cells [possibly], growing reliance on electromagnetic stimulation of the hypothalamus, tissue degradation of the motor and premotor centers of the brain which will	8

	ultimately be crippling. 365 days x 24 hours a day equals 8,760 hours a year of exposure to radiation, multiplied by 9 years in early March 2004 was 78,840 hours since installation suffering near nonstop radiation, and two years or 17,520 hours before the Roberts bench.	
*	**[P]articularly egregious – *brutal* - examples** prompting the United States to provide/monitor detecting devices located in neighboring buildings.	8
*	1. **Assailants frequently excessively radiate to** induce pain, commonly before Bestor goes to bed as if to deliberately induce plaque build-up. Quantifying that is near impossible – 1997 to 1999 was incredibly painful - but in fact the activity persists. "Jogging" is articulated as being one beneficial activity [forcing blood through the kidneys] but assailants radiate Bestor in the head as he jogs [around the mall between the Capital building and the Washington Monument 2/27 and 2/28 2004] apparently trying to diminish the beneficial effect.	8
*	2. **Human surveillance includes threatening** Bestor with crippled people ["gimp show"] or dementia suggesting others believe or are trying to establish the crippling as inevitable, which Bestor suspects confuses the ability of the Court or outside medical experts to objectively evaluate the situation. Bestor also claims that type of invidious assault [United States government or CIA type orchestrated maneuvering – no Japanese or foreign involvement] confuses the ability of judges to objectively assess and attribute arguments offered out of court. Lawyers with CIA	8

	connections certainly will try to influence court process.	
*	**Other victims incl. Dennis Sweeney, Mike** Barber, Gloria Hicks.	9
*	**President Jimmy Carter apparently similarly** implanted against his will and monitored, though perhaps not painfully radiated, since the late 1970s [4th Qrtr 1978 suggested]. Nancy Reagan famously slept with a gun under her pillow or in a nearby drawer during the subsequent Reagan administration.	9
*	**Bestor did bring the technology generally to the** attention of Agents Dickerson and Nakagawa of the Washington D.C. field office of the United States Secret Service on August 27, 2003.	10
*	**Bestor cites documentation on the origins of the** neuroprosthetic technology.	10
*	***Washington Post*, Sunday May 18 1980 Section** H page H4 readily available documentation related to Dennis Sweeney [1969-1980 continuing] discussing both applied strategy and tactics as but one example of harassment, there *using the victim's mother* in induced audio sequences which they continue to do pervasively here, Bestor ultimately threatening his own mother with suit].	11
*	***Pied Piper*, Richard Cummings 1985.**	11
*	***Dreams Die Hard*, David Harris, 1982 reissued** 1993	11
*	**Then-President Jimmy Carter being attacked** by a rabbit in 1999 – apparently MKULTRA technology though a different subproject [94 as opposed to 119]. [incl. reference George H.W. Bush was Director of	11

	the CIA January 1976 to January 1977; massive and sustained campaign against the Carter administration 1977 to 1981 including everything from State Department interpreters saying Carter lusted after the Poles to attacks with rabbits and Stansfield Turner being undercut and marginalized as Director of Central Intelligence].	
*	**Appeals Court 9/13/02 – "Motion Equating** Surveillance in Library of Congress Law Library to Unlawful Deprivation of Process" [701998-1].(jth), essentially claiming conspirators induce a 'cost/benefit' criteria or parameter into Bestor's legal efforts that others do not face.	12
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*	**34th annual neural prosthetic workshop at NIH**	12
	New York Times article of Sunday, March 16, 1980, *Lowenstein Hailed by Many Mourners*, by Paul L. Montgomery following Sweeney shooting Lowenstein.	13
*	**Chapin, J., and Moxon, K.A. eds. 2001. Neural** prosthesis for restoration of sensory and motor function. Specifically Chapin, Moxon, Nicolelis, Morizio, Wolf, *Section 6, Designing a Brain-Machine Interface'* from page 180-219. Boca Raton, FL.: CRC Press.	14
*	**Making 42:1986 Conspiracy violation claim,** Bestor had to claim a Conspiracy exists which he did in his Complaint [Complaint page 9 paragraph 20] concerning George H.W. Bush et al.	14
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	at Stanford, was briefly married to a woman named Mary King who twice remarried – the second time to a doctor named **Peter Bourne** who was ultimately disgraced [*perhaps in an intentional or orchestrated sequence designed to diminish then-President Jimmy Carter*] as 'drug czar who used drugs' in the Carter White House, and who has significant CIA contacts.	
*	**Richard S. Ehrlich, Washington Times, May 28,** 1994, Ex-Carter aide praises Burmese drug lord.	**15**
*	**Lowenstein was elected to the House of** Representatives (D-NY) in 1968.	**15**
*	**Lowenstein started serving as one of the junior** American Ambassadors to the United Nations in the delegation headed by Andrew Young. Lowenstein twice visited Africa in office, and following his resignation from the United Nations visited Africa three more times in 1979 [roughly January, April, and July].	**15**
*	**Peter Bourne conspicuously 'quit' the Carter** White House and covertly arrived at the United Nations as the 'assistant Secretary General responsible for water and sanitation' as Lowenstein was resigning the United Nations and visiting Africa.	**15**
*	***Pied Piper*, Richard Cummings, Lowenstein's** 1979 trips to Africa.	**15**
*	**MKULTRA undertakings related to** neuroprosthetics – Subproject 119.	**16**
*	**MKNAOMI [MKULTRA Subproject 110].**	**16**
*	MKULTRA Subproject 78 Biological Labs [incl. A-5].	**16**

*	**MKSEARCH/2**	**16**
*	**Tuskegee syphilis research and AIDs; CIA** Document A/BI 24-1, 4 August 1954, Subject: Methylcholanthrene. .....p. incl. George Wolf, Assistant Professor, University of Illinois. Chemical Induction of Cancer, 1953. See esp. pages 29, 44 and Carl Max Hasselmann and Hans Otto Johne in Arch. Dermato & Syphilis, 188, 693-707, 1950. MKULTRA Subproject 24 [origin of the cited memo 24-1] appears to remain classified.	16
*	**[Participants] Sweeney and Lowenstein and** then Bourne and AIDS; folk singer Joan Baez in a CIA orchestrated ground maneuver at a California hospital 12/02/69; David Harris, the famous anti-draft protestor who went on to write for the *New York Times* and cinematographer Ed Pincus [apparently related to Walter Pincus who writes on 'national security' for the *Washington Post*].....used to shape and influence public perception domestically.	17
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*	**[M]ultiple publications in various forms....some** directly by government [*Dreams Die Hard* by David Harris 1982 reissued 1993 was almost certainly vetted and approved by the CIA], some sponsored by government as Chapin & Moxon in *Neural prosthesis* **[para. 5 page 14]**, some on the technology and some on the tactics as in use of Sweeney's mother **[para. 2.1. page 11]**, some by Bestor including some advertising [*The Stranger*, Seattle].	19

	Attack on then-President Carter with a rabbit very likely by George H.W. Bush in 1979	19
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*	**Equal Protection .... more than a *reasonable basis*** for not hearing his attempt to avert a threatened reassignment, they need a *compelling reason* for not considering the matter.	20
*	***E.W. Montgomery Co. v. Gavin* (1932, Ct CI) 58** F2d 779 .....District Court was granted large powers to cut through formal objections and make all orders and issue all writs necessary to speed administration of justice and bring to final conclusion all cases pending before it.	20
*	*The Columbia* (1900, DC NY) 100 F 890 Predecessor to 28 USCS SS 2071 gave wide power to the district court.	20
*	Bestor v. Lieberman 03cv01470 Appeals Court docket 3/19/04 Judgment w/o memo filed [810691] that the appeal be dismissed for lack of jurisdiction. The district court's reassignment of appellant's civil action is not a final decision of the district court appealable under 28 USC 1291.	20
*	**28 USC 1291 [in preventing a gross miscarriage** of justice for example]	20
*	28 U.S.C. 372(c)	21
*	**Judicial Conduct and Disability Act October 15** 1980	21
*	**James R. Browning, *Evaluating Judicial Performance and Related Matters*** 90 F.D.R. 197, 205 (1981) ...."Conceding that almost all judges are almost perfect almost all the time, it is still true	21

	that on occasion a particular judge should not sit on a particular case. The statutory mechanisms for accomplishing this result are ineffective. Statutory provisions for disqualification for cause have been interpreted narrowly. Motions for disqualification are seldom granted [denied by Roberts in *Bestor v. Ashley* **Appendix 3**]. Appeal from the denial of such motions are rarely successful. There is a need, but there is no effective remedy."	
*	**Richard L. Marcus, *Who Shall Discipline Federal Judges and How?*** 149 F.R.D. 37 (1993) which discussing numerous complaints pages 378 to 389..... Outcomes can be summarized as a handful of judges hustled into retirement, some dismissals, and a number of findings that corrective actions had already been taken, but not one single reassignment.	21
*	*848 ex parte documentation*	22
*	**42 USC 1986** [S]uing the judge is very typically a *pro se* action and fuels bias in the federal courts which this Court cannot be blind to - hard rocks for the ship in the storm, but]	22
*	28 U.S.C. 372(c)	22
*	*848 ex parte* documentation [absence of]	22
*	**28 USCS SS372 CANON 3 A.(4)....[A judge** should] neither initiate nor consider *exparte* or other communications concerning a pending or impending proceeding. A judge, however, **may obtain the advice of a disinterested expert** on the law applicable to the proceeding before him IF **he gives notice to the parties of the person consulted and the substance of the advise, and**	23

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*	**28 USCS 372(c). Kennedy image sequence.**	24
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*	***Harbury v. Deutch*, 344 U.S.App.D.C. 68 (2000)** at 79: [9] This brings us to our only area of disagreement with the district court: Harbury's access to courts claim. "[T]he right to sue and defend in the courts," the Supreme Court long ago said, "is the alternative to force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship." *Chambers v. Baltimore & Ohio R.R.*, 207 U.S. 142, 148, 28 S.Ct. 34, 52 L.Ed. 143 (1907). The right protects not only the ability to get into court, *see, e.g., Ex parte Hull*, 312 U.S. 546, 61 S.Ct. 640, 85 L.Ed.1034 (1941), but also ensures that such access be "adequate, effective, and meaningful." *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).	26
*	**In *Eldred v. Ashcroft* 347 U.S.App.D.C. 121** (2001) "Merely because the parties fail to advance the proper legal theory	27

	underlying their claims does not - indeed cannot - prevent a court from arriving at the proper legal disposition. Once the issue is raised, a court has an obligation to determine what the law is which will govern the case at hand."	
*	***Price v. [Libya]* 294 F.3d 84 at 91-93:** Torture is a label that is 'usually reserved for the extreme, deliberate, and unusual cruel practices, for example, sustained systematic beating, application of electric currents to sensitive parts of the body, and tying up or hanging in positions that cause extreme pain. Id at 92-93 (quoting S. Exec. Rep. No. 101-30, at 14 (1990)).	27
*	**"Capable of repetition yet evading review"** doctrine .....incl. *McBryde v. Committee to Rev. Cir. Council Conduct* 347 U.S.App.D.C. 302 (2002) page 27, *Liu v. INS* 348 U.S.App.D.C. 250 at 253 page 27, and *Weinstein v. Bradford* 96 S.Ct. 347 (1975).	28
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*	**6. Bestor's immediate appeal dismissed as not a final decision of the district court appealable under 28 U.S.C. SS 1291**	33
*	**7. Several documents showing the technology originated as part of the Central Intelligence Agency Neuroprosthetic/MKULTRA effort**	34
*	**A.** Research proposal to [redacted] July 1, 1959	34
*	**B.** [Letter of] September 10, 1959.	35
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Statement of the Basis of Jurisdiction in this Court

i. **July 15, 2003** – Reassignment Order [**appendix 1**]
July 17, 2003 Plaintiff's Opposition to Reassignment of Case to Judge Roberts.
September 5, 2003 Plaintiff's 'Qualified' Opposition to Delay [opposing enlargement]
September 17, 2003 ALERT Plaintiff's 'Qualified' Opposition to Delay.
September 26, 2003 Order granting [8] Motion for Extension of Time to 11/5/03 to File Answer. Signed by Judge Richard W. Roberts on 9/25/03.(TDR)
HOWEVER, envelope was postmarked 06 Oct 2003 and Bestor did not receive the order for some days after that.
October 17, 2003 Notice of Interlocutory Appeal with brief frankly admitting Bestor was not entirely certain the September 26 Order by Roberts meant his [Bestor's] previous Opposition to the Reassignment had been denied but that in desperation he acted.
November 19 2003 Supplemental Brief.
December 16 2003 Reply Brief noting plaintiff and defendants then agreed the law was not clear on reassignment of cases in the District of Columbia.

ii. **March 19, 2004** – Appeal dismissed for lack of jurisdiction: not a final decision appealable under 28 U.S.C. 1291. **June 9 2004** *en banc* Appeal dismissed in the absence of a request by any member for a vote.
(i) and (ii) rulings included in the appendix.

iii. Jurisdiction is under 28 U.S.C. 1254 (1).

Constitutional Provision
[pertaining to Equal Protection]

Bestor maintains that in turning the blind eye [ignoring a reasonably construed *Price* allegation in returning a case to an unsympathetic jurist] the authorities – here a federal court

– must have a **compelling argument** *more than just a reasonable basis* for their action.1

Bestor attempts to avert a threatened reassignment from one judge to another in the district court of the District of Columbia.

A Concise Statement of the Case

1. Drugging and kidnapping Bestor, Japanese assailants installed a 'National Institute of Health/CIA-designed' technology for remotely monitoring and stimulating neural impulse in Bestor's skull and brain in Tokyo, March 1995. Bestor certainly knew he was being radiated at least periodically [energizing the neuroprosthetics from a remote location] – much worse after leaving Japan – and that somehow assailants had a way of keeping the radiation focused on him, but he did not begin to find out about the neuroprosthetics until September 1999 and then in a dawning realization or emergent awareness.

2. Bestor has had his head, skull, and brain imaged with MRI, CT Scan, and X-Ray trying to locate or otherwise characterize the neuroprosthetic in a nine year marathon of medical consultation leading from Tokyo to Seattle by way of Albuquerque and intermediate points. Largely comprised of microscopic wire on the inside of the skull, imaging the

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Note: 1 Bestor tried to determine 'of all reassignments what percentage of reassignments concern *pro se* litigants' in a letter to the clerk of the District Court dated December 18, 2003. In a reply dated January 27, 2004 [**appendix 5**] Ms. Nancy Mayer-Whittington, Clerk of the District Court, said that information does not exist and apparently cannot be easily discovered. The issue having been raised, Bestor would additionally ask what percentage of *pro se* civil complaints are ultimately heard in the District of Columbia – if any[?] – suggesting some metric is long overdue.

system demands a departure from Food & Drug Administration approved MRI procedures.

3. Originating in MKULTRA experimentation and research of the late 1950s and '60s [Subproject 119, Saul Sells at Texas Christian University – **Appendix 7A, B, C**] Bestor is confident discovery will ultimately show the 'difficulty in imaging' was actually a CIA type design criteria, but he more immediately needs court orders forcing a doctor to undertake the departure from FDA approved MRI procedures in imaging the system [submitted on numerous occasions to Judge Roberts].

4. Bestor's attempts at persevering in the semblance of a normal routine [encouraged by others in an orchestrated manner] ultimately proving futile, he arrived in Washington D.C. mid 2001 and sought the assistance of the FBI through the offices of his congressional representation. In a letter dated October 26, 2001, Mr. Arthur Radford Baker of the FBI responded by outlining a four part test: the activity Bestor alleged had to be criminal, a violation of federal law, within the investigative jurisdiction of the FBI, and Bestor had to have evidence [being significantly radiated in the Supreme Court Building at various times and severely radiated in the congressional office buildings October 4 2001 was not sufficient to prompt an FBI investigation absent some validation]. Mr. Baker also expressed reluctance to address what he felt were issues of Japanese sovereignty even in the United States.

5. Bestor is continually radiated, sometimes painfully. The neuroprosthetic system provides remote operators the ability to monitor individual electro-chemical nerve impulses in the human brain, and collectively reconstitute many showing thought process and sensory perception [remotely monitoring vision for example], as well as stimulating nerves to induce impulses which may include –under certain conditions – image and/or audio sequences. Unknown others

began revealing this hitherto unrecognized system capability to Bestor around the time he began trying to enter the Court system in late 2001.

6. Bestor entered the district court in February 2002 and was assigned to Judge Richard Roberts *presumably on a random basis* at time of filing *Bestor v. United States* 02-0279. Bestor sought the District Court's assistance both in imaging the neuroprosthetic and in contacting a subject matter expert – Dr. John Carney at the Defense Advanced Research Projects Agency [DARPA], who previously had refused to correspond with Bestor in the slim window of opportunity 'between awareness and court' apart from a brief telephone message Bestor contends was deliberately misleading in suggesting the neuroprosthetic was composed of uranium implants. One issue appears to be stimulating electrodes on the hypothalamus – a subject well beyond the expertise of every conventional doctor Bestor has spoken in the last nine years though Carney is thought to be an expert or to have access to experts.

From the time of entering the courts, patterns of surveillance hugely suggested others were contacting Roberts 'in chambers' or apart from the docketed filings. Bestor attempted to discover the specifics of those contacts so they might be included in his previous Appeal only to have his inquiry turned back by Roberts [**Appendix 4**].

7. Judge Roberts dismissed the previous case for lack of subject matter jurisdiction June 05 2002, and denied a motion for Rehearing and to correct the record on August 05 2002. Bestor's motion to compel Dr. Carney's assistance was denied by Roberts as moot [**Appendix 2**][obviously at that time and in that legal parameter. For Bestor as for others the court is a door and he needs to find the proper key]. Bestor asks this Court note the effect of Robert's denials have been two fold: no imaging for removal of the system from Bestor's skull and brain **and** no consultation for a more

immediate Band-Aid application related to Bestor's growing dependence on the electromagnetic radiation/ stimulation of the hypothalamus. Members of this Court may remember Bestor's previous *Petition for Certiorari* versus United States in which he tried to utilize the seldom argued Third Amendment to shield himself from all assailants at least in his own home; a larger result of having been denied discovery by Roberts.

8. Bestor alternately sued two physicians in Seattle claiming medical malpractice related to both imaging and interpretation of imaging, and, on the case being assigned to Roberts, promptly motioned for reassignment to a different judge August 28, 2002 denied by Roberts on September 5 2002 **[Appendix 3]** without further comment as to whether or not that denial represented a 'final appealable order' or ruling which Bestor might pursue further. To this day a controversy rages over whether or not it is possible to see electrodes on Bestor's hypothalamus in existing MRIs – in any event that case was dismissed by Roberts for want of personal jurisdiction October 15, 2002, declining to relocate the case to Seattle because Bestor had protested that he [Bestor] would be subject to punitive radiation in Seattle and therefore should not be made to return [Bestor suspects there is a legal term for letting a refugee fight assailants from the 'refuge point which ongoing invidious assault had driven him to' rather than making him return to face additional invidious assault, but neither he nor apparently Roberts know what it is]. **IN THIS CASE** [as opposed to the case at bar] Roberts did promptly rule on the reassignment motion.

9. Kennedy and Lieberman [defendants here] only acted against Bestor [attacking Bestor with electromagnetic radiation] after Roberts dismissed Bestor's complaint versus United States. As noted Bestor then failing in his second effort to secure imaging of the 'CIA neuroprosthetic surveillance technology' through the medical malpractice

lawsuit dismissed by Roberts, Bestor now attempts to litigate versus assailants he can identify, reasonably believes to be key in the invidious actions, knows to '*have a history*' in the technology, and is certain can help identify other participants and characterize *the conspiracy* which includes utilization of the 'NIH/CIA neuroprosthetic technology' – certainly not secret but not yet available to the general public.

10. At time of filing, this new case was assigned to Judge Urbina in the District Court, only to be reassigned to Judge Roberts [**Appendix 1**] who dismissed Bestor's previous efforts. Bestor immediately tried to defeat the reassignment with motions. The defendants asked for an enlargement or extension in which respond, which Roberts granted them 9/25/03 without answering Bestor's previously filed motions or oblique objection [Bestor actually proposed proceeding in tandem, he imaging the neuroprosthetics at his own expense while the defendants prepared for their appearance]. The larger point is that Roberts has had multiple opportunities in three different cases over a two year period to grant orders for imaging the neuroprosthetics; Roberts never has. Bestor's motions unanswered, he [Bestor] filed an interlocutory appeal. The Appeal Court denied relief based on jurisdiction [**Appendix 6**]. Belatedly Bestor discovered some expectation he approach the reassignment issue through a Judicial Disability allegation which he then did attempt to bring to the *en banc* Court's attention in a hastily filed and artificially truncated supplement to his *en banc* petition, but now disputes even the need for that here.

11. A fundamental question Roberts never addressed in either previous case is whether others previously conspired to deny Bestor the imaging. Caught in a sprawling gutter fight with various factions of various nation's surveillance and threat mechanisms, and by this time *very much weakened by Roberts' denials*, Bestor equates all 'medical procedures' other than those specifically designed to image and remove

invasive neuroprosthetics to actionable medical malpractice.

12. Appellee definitely argued against hearing Bestor's Appeal for a variety of procedural reasons. One of the Appellee's specific claims is that the case is improperly before the district court on jurisdiction. Having fulfilled a procedural requirement, Bestor intends to now additionally name the National Security Agency in the suit under Rule 15(d) or Rule 21; failing that he claims he could preserve the suit in federal court on diversity of citizenship [against two men from different states, both other than Washington D.C. which is where Bestor lives and is where several of the assaults occurred], captioning additional assailants if necessary.

Appellee also notes Bestor submitted a 'related case form' at filing; Bestor bitterly responds that while the point is correct he only did that because *pro se* litigants have to or at least he thought they had to, pointing at the requirement as evidence of bias *pro se* litigants face before the federal bench. In this case the offense[s], evidence [now incidentally additionally referring to a number of other victims – Dennis Sweeney, Mike Barber, and Gloria Hicks who Bestor never heard of at the time of *Bestor v. United States* though he claims Roberts should have] and defendants are certainly distinct.

Appellee does not clearly support or oppose the contested reassignment.

13. Bestor was astonished to discover the Appeals Court intended to consider the reassignment issue without oral argument and then that it decided it lacked jurisdiction which struck the *pro se* litigant pursed by foreign intelligence agencies in the United States as hugely destructive in process. Bestor prays this Court will remand to the district court averting the threatened reassignment, hear him, or return the matter to the Appeals Court in the District of Columbia for a decisive ruling finding – at least in Bestor's

case - the threatened reassignment to be the final order it is intended to be and within that Court's jurisdiction.

A Statement of Facts Relevant to the Questions Presented for Review

1. Bestor suffers numerous hurts from electromagnetic radiation associated with the neural/ neuroprosthetic system, including induced pain, **blurred vision, receding gum lines** and other typical manifestations of radiation apparently including reduced bone structure at the mouth, but the most serious issues are impossible to quantify – plaque build-up in the arteries [definite] and brain cells [possibly], **growing reliance on electromagnetic stimulation of the hypothalamus**, tissue degradation of the motor and premotor centers of the brain which will ultimately be crippling. 365 days x 24 hours a day equals 8,760 hours a year of exposure to radiation, multiplied by 9 years in early March 2004 was 78,840 hours since installation suffering near nonstop radiation, and two years or 17,520 hours before the Roberts bench. Note Bestor has even suffered significant radiation beyond that, some related to implants in the body and subdural on the head in addition to the neuroprosthetics – citing 'microwave-type' radiation in his apartment in Japan 1995-1996 and workplace in Kirkland WA 2000 – 2001 for example [June 26 and July 24 2000 in Kirkland as particularly egregious – *brutal* - examples prompting the **United States** to provide/monitor detecting devices located in neighboring buildings].

1. Assailants frequently excessively radiate to induce pain, commonly before Bestor goes to bed as if to deliberately induce plaque build-up. Quantifying that is near impossible – 1997 to 1999 was incredibly painful - but in fact the activity persists. "Jogging" is articulated as being one beneficial activity [forcing blood through the kidneys] but assailants radiate Bestor in the head as he

jogs [around the mall between the Capital building and the Washington Monument 2/27 and 2/28 2004] apparently trying to diminish the beneficial effect.

2. Human surveillance includes threatening Bestor with crippled people ["gimp show"] or dementia suggesting others believe or are trying to establish the crippling as inevitable, which Bestor suspects confuses the ability of the Court or outside medical experts to objectively evaluate the situation. Bestor also claims that type of invidious assault [United States government or CIA type orchestrated maneuvering – no Japanese or foreign involvement] confuses the ability of judges to objectively assess and attribute arguments offered out of court. Lawyers with CIA connections certainly will try to influence court process.

2. Whether or not previously litigated by other victims, the 'CIA invasive neuroprosthetic / invidious assault' scenario has happened before - certainly to Dennis Sweeney 1969 to at least the mid 1990's if not immediately ongoing, Mike Barber definitely ongoing from approximately the same time period, Gloria Hicks ongoing from approximately 1992. A survey of documentation concerning an individual named Peter Bourne – apparently a high ranking CIA official – led Bestor to believe President Jimmy Carter was similarly implanted against his will and has been monitored, though perhaps not painfully radiated, since the late 1970s. Subsequent interaction with surveillance mechanisms – as opposed to documentation – leads Bestor to believe Carter currently has a 'full up' wire based neuroprosthetic system in his skull and brain, which would have mandated bringing Carter to a hospital facility for imaging at the time of installation *presumably drugged and kidnapped similar to Bestor in Tokyo* [which obviously would mean Carter also suffered just dog**** Secret Service protection – *patriotic*

and loyal my ***], but it is possible other types of implants first gave remote operators the ability to monitor Carter in some limited ways – most obviously audio without an imaging capability.

Nancy Reagan famously slept with a gun under her pillow or in a nearby drawer during the subsequent Reagan administration, and one has to wonder whether she made that known attempting to protect Mr. Reagan or if the Secret Service made that known attempting to marginalize her [Bestor suggesting the latter]. Bestor tried to bring the neuroprosthetic technology generally to the attention of Agents Dickerson and Nakagawa of the Washington D.C. field office of the United States Secret Service on August 27, 2003 when they initiated an interview, though Bestor was not aware of the Carter situation at that time. Bestor subsequently provided Agent Nakagawa some CIA and media documentation, but was unable to obtain a copy of Agent Nakagawa's report. While Bestor thought the interview went pretty well, subsequent interaction with surveillance mechanisms leads him to believe the report was ultimately quite negative, diminishing him and quite possibly contributing to further invidious assaults.

All of those additional installations took place with the knowledge of the others who contacted Roberts February to June 2002 in the course of ***Bestor v United States.***

In the Appendix [**Appendix 7A, B, C**] Bestor cites documentation on the origins of the technology which he [Bestor] got from public and government sources, noting the Central Intelligence Agency [late 2003] still refuses to provide Bestor any information relevant to his own case – indeed any technical information from after the mid 1960s though information was made public under DARPA grants in the late 1990s. As noted, given 'conferences in chambers with others' Bestor suggests Judge Roberts either was or should have been aware of the *assaults-on-other-victims*

issue in dismissing Bestor's previous complaints in 2002.

1. The technology and utilization originating in MKULTRA experimentation and research in the late 1950s and 1960s has been made public in readily available documentation related to Dennis Sweeney [1969-1980 continuing] discussing both applied strategy and tactics [*Washington Post*, Sunday May 18 1980 Section H page H4 as but one example of harassment, there *using the victim's mother* in induced audio sequences which they continue to do pervasively here, Bestor ultimately threatening his own mother with suit]. At least two books published [*Pied Piper*, Richard Cummings 1985, and *Dreams Die Hard*, David Harris, 1982 reissued 1993 as Sweeney was coming out of prison] and numerous articles - no 'secret' involved beyond assailants seeking refuge in the audacity of the assaults.
2. Members of this Court may remember then-President Jimmy Carter being attacked by a rabbit in 1999 – apparently MKULTRA technology though a different subproject [94 as opposed to 119], that attack was then leaked by the press across Labor Day weekend 1999. In-and-of itself, use of MKULTRA technology in the attack seems highly likely but true confirmation of CIA-type involvement is in the associated media action pattern. George H.W. Bush was Director of the CIA January 1976 to January 1977; no matter who was immediately responsible there clearly was a massive and sustained campaign against the Carter administration 1977 to 1981 including everything from State Department interpreters saying Carter lusted after the Poles to attacks with rabbits and Stansfield Turner being undercut and marginalized as Director of Central Intelligence.

Given the contact in chambers Roberts had ample opportunity to readily explore these issues which are

cumulatively related - *though Bestor did not know that in early 2002, Roberts either should have known or been reasonably expected to anticipate that given Bestor's complaint and what documentation Bestor was able to submit* - and Roberts' dismissal of Bestor's complaint versus United States was shockingly permissive in allowing government agents and agencies to continue in undertaking truly invidious activities including against Bestor which certainly has negatively impacted court process beyond Roberts' own Court. Previously on appeal, leading up to his Third Amendment petition Bestor was under surveillance and complained about it to the Appeals Court 9/13/02 – "Motion Equating Surveillance in Library of Congress Law Library to Unlawful Deprivation of Process" [701998-1].(jth), essentially claiming conspirators induce a 'cost/benefit' criteria or parameter into Bestor's legal efforts that others do not face.

3. Bestor himself has decisively acted to vacate any and all 'security classification' issues with utmost finality, in advertising [$3,000 for a four week series of ¾ page advertisements July/August 2001 in *The Stranger* of Seattle, a newspaper similar to the Washington D.C. *City Paper* or the Chicago *Reader*, six hundred dollars for individual advertisements in other papers across September/October 2002], writing and presenting [displaying and handing out copies of a large graphic poster at the 34th annual neural prosthetic workshop at NIH with text in the accompanying conference handout October 2003], and contacting foreign governments and media [including the governments of Cuba and France; newspapers and electronic media from Russia, China, Japan, and a host of other Asian, American, and European countries from mid-2001 to date].

4. The previous invidious deployment against Dennis

Sweeney was orchestrated by a man named Allard Lowenstein, at the time a close friend and associate of Edward Kennedy's as evidenced by a *New York Times* article of Sunday, March 16, 1980, *Lowenstein Hailed by Many Mourner*s, by Paul L. Montgomery following Sweeney shooting Lowenstein:

> .... Senator Edward M. Kennedy, who interrupted his [presidential] campaign in Chicago to fly here [New York] Friday when he heard Lowenstein had been shot, paid affectionate tribute to his friend and advisor in a speech yesterday morning before the New York state convention of the United Federation of Teachers.
>
> **'Portable and Powerful Lobby'**
>
> "With his endless energy, with his papers, his clothing, his books and seemingly his whole life jammed into briefcases, envelopes, and satchels – all of it carried with him everywhere – he was a portable and powerful lobby for progressive principals," said the Senator, who looked grim and unsmiling and was frequently interrupted by applause.

When MKULTRA documentation was discovered in 1977, Kennedy was Chairman of the Senate Subcommittee on Health and Scientific Research which very likely was involved in development of the implant technology, and in the context of the situation it is certainly possible the 'grim and unsmiling' Kennedy feared getting busted on invidious use of the technology in the middle of his presidential campaign in 1980, flying to New York intending to undertake 'damage control' as may have been required. Beyond '*assaults-on-other-victims*' **[para. 2 pages 7-10]**, Bestor argues Roberts should have anticipated this fairly obvious linkage between the technology and the assaults on Bestor, and should have acted decisively to prevent these

particular assaults undertaken by the defendants in the immediate case from occurring.

5. The United States government subsequently sponsored publication on the technology, citing in particular

> Chapin, J., and Moxon, K.A. eds. 2001. Neural prosthesis for restoration of sensory and motor function. Specifically Chapin, Moxon, Nicolelis, Morizio, Wolf, *Section 6, Designing a Brain-Machine Interface'* from page 180-219. Boca Raton, FL.: CRC Press.

but noting that was without ever suggesting how the technology might be imaged.

6. In the case at bar, in claiming a 42:1986 Conspiracy violation, Bestor had to claim a Conspiracy exists which he did in his Complaint **[Complaint page 9 paragraph 20]** concerning George H.W. Bush et al. Bestor also sought to notify Congress of the situation which led to the interview with Agents Dickerson and Nakagawa of the United States Secret Service Washington Field Office **[para. 2 page 9-10]**. That Conspiracy situation has become increasingly complex:

1. **'Previous neuroprosthetic victim' Dennis Sweeney** met Allard Lowenstein at Stanford, where he was 'down selected' or groomed by Lowenstein apparently well in advance of any particular intent to assault or implant him.
2. **Sweeney was briefly married to a woman named** Mary King, following which they divorced and she twice remarried -- the second time to a doctor named Peter Bourne who was ultimately disgraced [*perhaps in an intentional or orchestrated sequence designed to diminish then-President Jimmy Carter*] as 'drug czar who used drugs' in the Carter White House, and who

has significant CIA contacts [ongoing – reflected in the public record most blatantly May 28, 1994, *Ex-Carter aide praises Burmese drug lord*, Richard S. Ehrlich, *The Washington Times*, and in photographs taken with the Burmese drug lords].

3. **Lowenstein was elected to the House of** Representatives (D-NY) in 1968 and was seated on the Agricultural Committee, immediately following which Sweeney was implanted. In the group of Lowenstein, King, and Bourne, it is not entirely clear who drove Sweeney being implanted but he was, thereafter suffering induced audio sequences increasingly dominated by Lowenstein across the 1970s.
4. **1978-1979 Sweeney noticed a quantifiable** escalation in the nature of the induced audio sequences, which was around the time Lowenstein started serving as one of the junior American Ambassadors to the United Nations in the delegation headed by Andrew Young. Lowenstein twice visited Africa in office, and following his resignation from the United Nations visited Africa three more times in 1979 [roughly January, April, and July]. Peter Bourne conspicuously 'quit' the Carter White House and covertly arrived at the United Nations as the 'assistant Secretary General responsible for water and sanitation' as Lowenstein was resigning the United Nations and visiting Africa.
5. **In *Pied Piper*, author Richard Cummings notes** Lowenstein's 1979 trips to Africa were aimed at moving past the apartheid era, Frank Carlucci conceptually supported Lowenstein's travel whether or not entirely knowledgeable in it, and that at least the July trip was sponsored by Oppenheimer/DeBeers. Surveillance elements interacting with Bestor suggest both the April AND July trips were sponsored by Oppenheimer/DeBeers; in any case, after an

appropriate gestation period came the widespread plague of AIDS in sub-Saharan Africa.

6. **Investigating MKULTRA undertakings related to** neuroprosthetics – Subproject 119 **[para. 3 page 1]** – Bestor has developed some familiarity with CIA structure and paperwork [at least concerning MKULTRA and 'Sidney Gottlieb' who Bestor increasingly believes was but a front for others], and it was a simple matter for Bestor to look at MKULTRA Subproject 110 MKNAOMI – widely alleged to have been the administrative structure supporting development of the AIDS cancer virus.
7. **MKNAOMI had a companion project MKULTRA** Subproject 78 Biological Labs, with which it was ultimately unified as MKSEARCH/2. The AIDS cancer virus was developed by the United States government somewhere in the MKNAOMI Subproject sequence. That information was revealed by an informer [at least one] and Bestor speaks with certainty based on his efforts to identify or locate the informer. The Biological Labs subproject was in turn divided into separate projects A/A-1 to A-7, and interaction with the surveillance mechanisms – essentially the CIA restricting access to previously released documentation at the National Archives and threatening to reclassify documents at the National Security Archive at George Washington University - leads Bestor to claim A-5 is/was particularly important in supporting the MKNAOMI AIDS cancer virus research effort.

Members of this Court may be familiar with the Tuskegee syphilis research that focused on black sharecroppers well into the 1970s and increasingly appears related to the development of AIDS. From CIA Document A/BI 24-1, 4 August 1954, Subject:

Methylcholanthrene:
George Wolf, Assistant Professor, University of Illinois. Chemical Induction of Cancer, 1953. See esp. pages 29, 44 etc. Methyl Cholanthrene is a good indicator (high tumor incidence) and a good promoter (short latent period) p.85 Wolf.
Carl Max Hasselmann and Hans Otto Johne in Arch. Dermato & Syphilis, 188, 693-707, 1950 reported primary multiple skin carcinoma with simultaneous tertiary syphilis. Disturbances of the cholesterol metabolism, present in syphilis cases of longstanding, as well as cancer cases are discussed with respect to the chemical reaction between the physiological substances....

Certain strains of the AIDS cancer virus are targeted; Bestor does not yet know if the black sharecroppers in *Tuskegee* were used because they were black or because they were available. Not surprisingly, MKULTRA Subproject 24 [origin of the cited memo 24-1] appears to remain classified.

8. **Sadly, it now appears the afore mentioned Bourne** and Carlucci are knowledgeable in the imprisonment or restraint of American POW/MIA from the Viet Nam War era in Southeast Asia – the conspiracy only grows.

7. With bitter irony Bestor notes Roberts' previous dismissals focused Bestor on first Sweeney and Lowenstein and then Bourne and AIDS; had Roberts let Bestor's earlier case go forward Bestor never would have encountered any of this ever expanding circle – folk singer Joan Baez in a CIA orchestrated ground maneuver at a California hospital December 2 1969; David Harris, the famous anti-draft protestor who went on to write for the *New York Times* and

cinematographer Ed Pincus [apparently related to Walter Pincus who writes on 'national security' for the *Washington Post*] as but two of the CIA contacts used to shape and influence public perception domestically – nothing foreign or overseas about this,

and this is still the ***Facts*** part of Bestor's *Petition for Certiorari.*

We haven't even gotten to the ***Argument*** section yet, and Bestor claims these circumstances are far beyond what this Court can realistically expect a forlorn *pro se* litigant attempting to overt a threatened reassignment to meaningfully investigate. Suffering the ongoing radiation by itself – for nearly a *decade* [and two years or 17520 hours in front of Roberts] should be more than sufficient 'urgency,' 'likelihood,' and 'harm' to tip the balance in evaluating extreme *enough* circumstances. This Court should not go further but should remand now to the district court, averting the threatened reassignment.

Beyond the *extreme* nature of the circumstances the *disparate nature of the issues* vis-à-vis Roberts and the conspiracy plaguing Bestor - apart from Defendants Lieberman or Kennedy – must lead this Court to conclude the issues should be separated, again leading this Court to remand to the district court averting the threatened reassignment.

It is difficult to imagine *yet more* exceptional circumstances ever coming before this Court – do people *commonly* hijack CIA technology and then use it apparently with government permission? are *many* people radiated in the Supreme court building and Senate gallery? do *yet more* duplicitous assailants routinely interact with government security agencies? Multiple choice – for whichever reason[s] this Court should remand right here and right now averting

the threatened reassignment, but failing that Bestor continues with arguments.

A Summary of Argument.

1. The heart of this matter – which certainly includes Bestor's previously unsuccessful efforts to obtain information from government about imaging highly specialized technologies and identifying invidious assailants [gaining protection from the latter]– is Bestor trying to remove a NIH/CIA designed system of neuroprosthetics from his own skull and brain. Bestor argues the federal court must be grounded in reality, and that – given multiple publications in various forms, some directly by government [*Dreams Die Hard* by David Harris 1982 reissued 1993 was almost certainly vetted and approved by the CIA], some sponsored by government as Chapin & Moxon in *Neural prosthesis* **[para.5 page 14]**, some on the technology and some on the tactics as in use of Sweeney's mother **[para.2.1. page 11]**, some by Bestor including some advertising [*The Stranger*, Seattle], **and invidious and ongoing use of the technology against a number of others** including in an attack on then-President Carter with a rabbit very likely by George H.W. Bush in 1979 and very likely an attack on Carter's person as well – the weight of the Court should back Bestor in imaging.
1A. Others would conceal that point behind curtains as the Wizard of Oz, but really here we are. Bestor must be allowed to image and remove the neuroprosthetics from his own skull and brain, cannot do that without court intervention [a difficult imaging process very likely part of the CIA design criteria], and Judge Roberts previously [and repeatedly] failed to sign court orders allowing Bestor to image the system at Bestor's own expense or otherwise allowing Bestor to proceed in discovery. That is an issue between Bestor and Judge Roberts, and a reason for aveiding the threatened

reassignment, but it does not involve Lieberman or Kennedy *[arguing the issue should be considered apart from any subsequent appeal]*.

2. Fundamentally the threatened reassignment both has the appearance of being a final order and in fact is intended to be a final order. While the absence of law is not generally considered good argument Bestor very much doubts anyone can seriously contend the threatened reassignment is NOT intended to be a final order.

End of the day, given Bestor alleging on-going assaults, the District of Columbia Appeals Court needed more than a *reasonable basis* for not hearing his attempt to avert a threatened reassignment, they need a *compelling reason* for not considering the matter and they didn't have one or never stated it if they did. The Appeal Court passed based on jurisdiction but given their role in defining such standards 'jurisdiction' was not compelling. It is true:

> District Court was granted large powers to cut through formal objections and make all orders and issue all writs necessary to speed administration of justice and bring to final conclusion all cases pending before it. *E.W. Montgomery Co. v. Gavin* (1932, Ct Cl) 58 F2d 779

and

> Predecessor to 28 USCS SS 2071 gave wide power to the district court. *The Columbia* (1900, DC NY) 100 F 890

but Bestor would point out those are antiquated rulings in light of more recently enforced standards in equal protection. From the Appeals Court docket:

> 3/19/04 Judgment w/o memo filed [810691] that the appeal be dismissed for lack of jurisdiction. The district court's reassignment of appellant's civil action is not a final decision of the district court appealable under 28 USC 1291.

Bestor actually disputes both parts: it is a final decision and that at least in his case – alleging extreme circumstances occasionally if not consistently meeting the definition of torture in the District of Columbia under *Price* – it must be appealable under 28 USC 1291 [in preventing a gross miscarriage of justice for example].

3. In answering his own second question – the reassignment issue as an unfair burden on top of any other eventual appeal – Bestor does not have to detail all the other issues he might otherwise pursue [the foregone opportunity]; the important point is illustrating this issue – with the judge and not the defendants - is more properly resolved in advance.

'The other side of the coin' is that under 28 U.S.C. 372(c), which this Court conceptually might expect Bestor to alternately pursue, Bestor's case will go back to Roberts unless Bestor is successful in inflicting serious career damage on the guy, which Bestor argues is not fair to either him or Roberts, makes no allowance for what Bestor maintains are his unique and compelling circumstances, and Bestor claims that is also contrary to the intent of the Judicial Conduct and Disability Act passed October 15 1980. Citing James R. Browning, *Evaluating Judicial Performance and Related Matters* 90 F.D.R. 197, 205 (1981) "Conceding that almost all judges are almost perfect almost all the time, it is still true that on occasion a particular judge should not sit on a particular case. The statutory mechanisms for accomplishing this result are ineffective. Statutory provisions for disqualification for cause have been interpreted narrowly. Motions for disqualification are seldom granted [denied by Roberts in *Bestor v. Ashley* **Appendix 3**]. Appeal from the denial of such motions are rarely successful. There is a need, but there is no effective remedy."

That was still true ten years later, citing Richard L. Marcus, *Who Shall Discipline Federal Judges and How?* 149

F.R.D. 37 (1993) which discussing numerous complaints pages 378 to 389. Outcomes can be summarized as a handful of judges hustled into retirement, some dismissals, and a number of findings that corrective actions had already been taken, but not one single reassignment.

4. An administrative query might well find Roberts already took corrective action – he's a fool if he hasn't [always compile the requisite 848 ex parte documentation, never again speak to anybody in chambers without ascertaining their full agenda] – but that is too late for Bestor getting radiated in the eyes April 14, 2004 in the Jefferson Building of the Library of Congress. Jefferson has the only reading room with a water fountain in it, and Bestor sits near the water fountain occasionally washing his eyes which seems to help but if Roberts had permitted discovery TWO YEARS AGO at Bestor's own expense we would be past this part by now.

5. A better opposing argument might ask why Bestor doesn't caption Roberts in the 42:1986 Complaint, and while Bestor thought about it he suspects Roberts's immunities would make the action futile. Court is suppose to involve substantive actions and not mere gestures, is it not? Beyond that, Bestor claims suing the judge is very typically a *pro se* action and fuels bias in the federal courts which this Court cannot be blind to - hard rocks for the ship in the storm, but ultimately suing Roberts represents the same barrier as the 28 U.S.C. 372(c) action. However unfairly, Bestor has been made a boxer who admittedly is being pummeled but at least aspires to defend himself from the other fighters in the ring, and this Court should not make him additionally tangle with the referee.

6. He may be forced to try, but whether or not Bestor could prevail in a 28 USCS SS372 Complaint against Roberts is not clear and Bestor argues he should not have to raise the argument. Nowhere does it say 28 USCS SS372 is

to be the test for averting a reassignment; anticipating the point Bestor tried to find out what percentage of reassignments concern *pro se* litigation but in a reply dated January 27 2004 **[Appendix 5]** the clerk of the district court told Bestor that data is not available.

7. Bestor did try to obtain documentation from Roberts that he might better characterize his previous *Petition* to this Court, and got a letter back March 6 2003 **[Appendix 4]** effectively denying access. Conceptually Roberts certainly should have *848 ex parte* documentation concerning contacts with others about Bestor, but if he does Bestor was not able to get it. Should Bestor have sought an injunction? Against a seated federal judge? Bestor is a white middle-aged college graduate with no previous convictions – were he a young black high school drop-out with several convictions how far would that fly?

8. Under 28 USCS SS372 CANON 3 A.(4) [A judge should] neither initiate nor consider *exparte* or other communications concerning a pending or impending proceeding. A judge, however, **may obtain the advice of a disinterested expert** on the law applicable to the proceeding before him IF **he gives notice to the parties of the person consulted and the substance of the advise, and affords the parties reasonable opportunity to respond.** [*Bestor emphasis*].

There is no disinterested expert here, and Bestor did not get any of the rest of it either – notice of the person consulted, substance of the advise [Bestor calls the theory they articulate 'Public Officials in Private Conspiracy using Government Resources – human and technical – on the Quasi Private Public Dime' and suggests objectively considered this Court would find the theory asinine], or any reasonable opportunity to respond.

Can't ignore the point – if the persons in contact with Roberts had been arguing ***for*** Bestor we'd probably be home

by now, but most obviously CANON 3A(4) *if it was to be argued* is an issue between Bestor and Roberts; not an issue between Plaintiff Bestor and Defendants Lieberman or Kennedy. 46 Am Jur 2d SS176: "The mere fact that a judge had previously presided over a different case involving the same party is not, **by itself**, a sufficient basis for requiring disqualification." The citations provided in 46 Am Jur 2d SS176 are probate and child custody; certainly nothing in assault or torture and returning for a moment to the 'urgency,' 'harm,' and 'likelihood' issues Bestor claims his circumstances overwhelm the 46 Am Jur 2d 176 precedent.

9. Bestor claims contact between Roberts and others was so pervasive in the process he should not even have to identify specific instances [he can if he must offer up specific instances in a pattern - 28 USCS 372(c) as racketeering statute], and while he definitely believes there to be a relationship between Roberts and subsequent attacks including by the defendants here, Bestor only alleges a general causal relationship, not inciting direction. A permissive attitude as opposed to Roberts picking up the phone in July 2002 and authorizing Kennedy to radiate Bestor in the head.

Is that to be the test – Roberts put the hit out, Roberts was gunning for Bestor, Roberts was riding around town asking on street corners until finally he decided to have Kennedy smoke Bestor out? Don't be ridiculous. Bestor claims Roberts used poor judgment, not that he is vindictive or cruel.

During previous debates on prescription drug pricing in the Senate, Kennedy ran the floor fight blocking a moderate proposal called Ensign-Hagel. Bestor claimed Kennedy 'threw prescription drug pricing under the bus' and the first induced image sequence with Kennedy in it uniquely targeting Bestor was promptly induced in Bestor's brain as Bestor slept. In light of the prescription drug package which

eventually passed Bestor certainly doesn't back down on his allegation – far preferring the foregone Ensign-Hagel or even 'Tripartite Agreement' involving Jeffords to what we got – but doubts a single specific act of Roberts led to Kennedy's act.

That is properly in Bestor's lawsuit versus Kennedy – that is not in this *Petition* trying to keep this new case away from Roberts. A fine line certainly, '*in an immediate 42:1986 situation how often can a judge rule against a victim without becoming part of the conspiracy*' actually is a very legitimate question; but this *Petition* is just Bestor trying to stay the **** away from the guy.

10. There certainly are an abundance of surveillance mechanisms – even private ones – in Washington D.C., but his case is so highly politicized Bestor does not think he can meaningfully access any of them. With a circumstantial case centered around the neuroprosthetic technology, Bestor doesn't need to against Lieberman and Kennedy. Not only are the issues disparate but the discovery process would be hugely disparate versus Roberts.

11. Yet this Court cannot help but incidentally note that – as Bestor has 'been in the system' since August 2001 [improperly filed he was not able to actually start his case until February 2002] – in trying to 'pick and choose' alternatives or options others have done a damn poor job of it, but it appears 'they're trying to do it while maintaining the fiction of not doing it,' a claim Bestor makes additionally based on patterns of radiation and surveillance associated with the medical malpractice lawsuit Roberts dismissed. Judge Roberts has certainly let the 'picking and choosing' go on [so far only choosing 'no'] but Bestor cannot place Lieberman or Kennedy immediately in that picture. No doubt the collaboration has an echo; the surveillance mechanisms have a much better communication mechanism than Bestor which has had a ripple effect across the case. David Perry, a

Siemens Vice President in imaging, previously worked for the government apparently on classified projects. As that discovery prompted a visible reaction in human surveillance surrounding Bestor, Bestor speculates with some certainty Mr. Perry knows exactly what technology and processes Bestor refers to, but Mr. Perry has entirely refused to correspond with Bestor. Bestor attributes that 'failure to communicate' to government classification or contact or both, neither of which has any substantive issue behind it but both of which Roberts seems to defer to.

12. Concluding Bestor's discussion of what might be seen as the conventional 28 USCS SS372(c) allegation in the District of Columbia Circuit [wife of Judge working for Senator, two Senators having lunch with remote Judge] or 'big fish in a small pond as actionable legal theory,' Bestor notes he has much better arguments than have previously been discussed in published opinions on 28 USC 372(c) in the District of Columbia – 'ongoing incidents of contact specific to his case' rather than 'social interaction' or 'employment contact not related to the case discussed' which he will raise if he must but finds it hard to believe this Court would make him suffer the additional radiation or expense.

13. Japanese assailants attack Bestor and eventually Bestor will be able to act against Japan, but that is action *in the future* - not now, and it certainly would be a process violation to inhibit Bestor's movement by depriving him of the stepping stones. Roberts – on multiple occasions – should have helped Bestor image the neuroprosthetics in Bestor's own skull and brain, and there does seem to be some sympathy for those in Bestor's straights within the District of Columbia circuit.

From the Appeals Court in *Harbury v. Deutch*, 344 U.S.App.D.C. 68 (2000) at 79:

> [9] This brings us to our only area of disagreement with the district court: Harbury's access to courts

> claim. "[T]he right to sue and defend in the courts," the Supreme Court long ago said, "is the alternative to force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship." *Chambers v. Baltimore & Ohio R.R.*, 207 U.S. 142, 148, 28 S.Ct. 34, 52 L.Ed. 143 (1907). The right protects not only the ability to get into court, *see, e.g., Ex parte Hull*, 312 U.S. 546, 61 S.Ct. 640, 85 L.Ed.1034 (1941), but also ensures that such access be "adequate, effective, and meaningful." *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

In *Eldred v. Ashcroft* 347 U.S.App.D.C. 121 (2001) at 125 the District of Columbia Appeals Court recently found:

> "Merely because the parties fail to advance the proper legal theory underlying their claims does not - indeed cannot - prevent a court from arriving at the proper legal disposition. Once the issue is raised, a court has an obligation to determine what the law is which will govern the case at hand."

The definition used in the District of Columbia suggests torture must be ongoing, Bestor noting certainly before the Roberts bench he will be subjected to ongoing invidious assaults. *Price v. [Libya]* 294 F.3d 82 at 91-93:

> Torture is a label that is 'usually reserved for the extreme, deliberate, and unusual cruel practices, for example, sustained systematic beating, application of electric currents to sensitive parts of the body, and tying up or hanging in positions that cause extreme pain. Id at 92-93 (quoting S. Exec. Rep. No. 101-30, at 14 (1990)).

and *Price* suggests the behavior has to be sustained, as in the

case at hand, to warrant the label. Surely there is some "capable of repetition yet evading review" doctrine defying mootness as applied to physical assault rather than just the tame administrative matters addressed by the Appeals Court in *McBryde v. Committee to Rev. Cir. Council Conduct* 347 U.S.App.D.C. 302 (2002) and *Liu v. INS* 348 U.S.App.D.C. 250 at 253, both of which trace back to *Weinstein v. Bradford* 96 S.Ct. 347 (1975). Put another way, it is not clear how the District of Columbia Appeals Court can reconcile the absence of such a doctrine with *Price* which is ongoing or repeated.

14. A huge problem Bestor faces is that by nature an 'assault with electromagnetic radiation' claim admittedly sounds extreme which the United States attorneys who argue against Bestor have not hesitated from using in opposition briefs:

> **[Starting page 1]** As best can be gleaned from his many vague, cognitively scattered, and fantastic allegations, Plaintiff also alleges that the "United States" developed the neuroprosthetics system in connection with "verification of Soviet nuclear weapons"....**[ending page 9]** Plaintiff's complaint is confusing, containing bizarre allegations, and fails to set forth his claim in clear and concise terms.....

Paul A. Mussenden, Defendant's Memorandum of Points and Authorities In Support of Its Motion To Dismiss, *Bestor v. Lieberman et al.*, 03-1470.

Scary for this Court is that Mr. Mussenden is substantially misrepresenting the Complaint apparently hoping the judge [Roberts] will simply believe him and not actually read it. A 'young law clerk just kind of going along with the United States Attorney when the judge asks about it and the case is over' type scenario probably does plague the *pro se* litigant, but the larger problem for Bestor is that the young law clerk may have no experience in true terror. *Given implants in the*

lower intestines, a hostile assailant can radiate you and you will go from passing solid feces to spurting black water in about eighteen hours – at the age of 35. Will your lower intestine function come back after they stop radiating you, or will you be reduced to wearing a diaper for the rest of your life? So far the function has always come back, but a clerk fresh from law school may not understand the terror in the matter.

15. Similarly, Bestor hopes to improve the lot of others. Gloria Hicks is an elderly black woman from Maryland, and somebody is using the same 'technology concept' if not exactly the same implants and emitting devices to beat the crap out of her. If Bestor prevails in his case, does this Court seriously expect Bestor to then argue over the reassignment to Roberts in his own case that Hicks might profit from some modest reform effort in the judiciary?

The result of not hearing the reassignment matter now may well be a number of litigants in extreme predicaments abandoned, with the National Security Agency and CIA – *who know exactly what information Bestor wants and needs to obtain in order to have the neuroprosthetics removed or in some way develop a reasonable prognosis* – no more inclined to provide the information than they were to begin with, and perhaps significantly less inclined. Bestor would represent that as a macro 'equal protection' issue well beyond him; attacking Carter with the rabbit was relatively benign by the standards here in that it did not immediately involve another country, important government policy, or actual pain and suffering, which typical utilization of the implant system seems to.

16. Law outside the District of Columbia includes at least one case which might be obliquely interpreted as an exception to the general rule of only losers litigate Judicial Disability: from the 4th Circuit in 1986 Matter 795 F.2d 379, "this complaint presents the rather remarkable phenomenon

of a successful litigant whose complaint is that the success was not speedy enough and that the district judge, the subject of the complaint, engaged in conduct prejudicial to the effective and expeditious administration of the Courts in the process of deciding for the complainant." Even here a winner perceived themselves to have been a loser, but a close reading of the opinion goes on to outline a long term libel/ first amendment issue between the judge and a newspaper which had been a persistent critic.

17. Bestor's arguments with Roberts are clearly different from his arguments with Lieberman or Kennedy.

A. Expediting the matter this Court should simply remand to the District Court averting the threatened reassignment.

B. Because Roberts never reached a finding on the neuroprosthetics this Court could remand to the Court of Appeals for supervised discovery, alternately, this Court could make the Appeals Court squarely address the 'extreme circumstances' and 'disparate issues' claims.

C. Still protesting he should not have to pick that fight for a variety of both procedural and tangible reasons, Bestor would – certainly only as a last ditch effort if he could not get this Court remand to the district court averting the threatened reassignment or the Appeals Court for further review - seek remand on 28 USCS 372(c) to the District of Columbia Court of Appeals.

18. Taking a different track, the imaging requirement [as an 'isolated issue' to be undertaken at Bestor's own expense] is certainly extraordinary enough to warrant relief in the form of an order under 28 USC 1651(a) greatly clarifying the litigation and court process.

Respectfully submitted,

Andrew S. Bestor appearing *pro se*
144 11th St. SE, No. 4
Wash D.C. 20003 (202) 320-3638

Appendix

1. Contested Reassignment Order.
Utility Events
1:03-cv-01470-RMU BESTOR v. LIEBERMAN et al
U.S. District Court
District of Columbia
Notice of Electronic Filing
The following transaction was received from nmw, entered on 7/15/2003 at 10:12 AM and filed on 7/14/2003
Case Name: Bestor v. Lieberman et al
Case Number: 1:03-cv-1470
Docket Text: Case Reassigned to Judge Richard W. Roberts. Judge Ricardo M. Urbina no longer assigned to the case. (nmw,)
The following document(s) are associated with this transaction:
1:03-cv-1470 Notice will be electronically mailed to:
1:03-cv-1470 Notice will not be electronically mailed to:
Andrew Bestor
[w/ address 144 11th Street SE, No. 4, Wash D.C. 20003]

2. Roberts denied consultation with only known medical authority on neuroprosthetics in initial case [*Bestor v United States* 02-0279 (RWR)] June 4, 2002.
....The complaint is hereby DISMISSED. All other pending motions are DENIED as moot [*Bestor took that to include his 'Plaintiff's Motion for Immediate Technical / Medical Discovery by Defendant': (4)(a) This is not a request for free medical care, only a request for expert medical care which defendant United States is uniquely capable of providing (knowledge and experience including experience in Plaintiff's case), is able to provide, and in some measure already provides.... filed 3/14/2002 and reflected in the docket at 10 Defendant's opposition to it*].

3. Roberts denied reassignment in previous case [requested in a motion 8/28/2002 and denied 9/05/2002].
The following transaction was received from TDR, on 9/5/2002 at 9:03 AM
Case Name: Bestor v. Ashley et al
Case Number: 1-02-01583-RWR
Document Number:
Docket Text: Minute Entry: Motion for case to be assigned to a different judge [6] denied and terminated. (TDR)
The following document(s) are associated with this transaction:
1-02-01583-RWR Notice will be electronically mailed to:
1-02-01583-RWR Notice will not be electronically mailed to:
[Bestor and defendant's attorneys]

4. Bestor did attempt to formally discover the nature of the contact between Judge Roberts and others that he might accurately characterize it in a previous appeal.
United States District Court For The District of Columbia
Chambers of Richard W. Roberts, United States District Judge
March 6, 2003
Mr. Andrew Bestor
144 11th Street, SE, No. 4
Washington, DC 20003
Re: Bestor v. United States, 02cv279
Dear Mr. Bestor:
Enclosed please find your letter dated February 28, 2003 regarding the case referenced above. Please note that Local Rule 5.1(b) states: "Except when requested by a judge, correspondence shall not be directed by the parties or their attorneys to a judge, nor shall papers be left with or mailed to a judge for filing." Therefore, the letter is being returned to

you.
Sincerely, Joseph C. Merschman, Law Clerk to Judge Roberts

5. Bestor attempted to discover 'of all reassignments, what percentage relate to *pro se* litigants.'
United States District Court for the District of Columbia
Office of the Clerk
333 Constitution Avenue, NW
Washington DC 20001
Nancy M. Mayer-Whittington, Clerk
January 27, 2004
Andrew S. Bestor, 144 11th Street SE, Apt #4, Washington DC 20003
Dear Mr. Bestor, I'm sorry, but we are unable to provide the material you requested in your December 18 2003 letter to me. The data, "of all reassignments made by the scheduling committee, what percentage concern pro se litigants?" is not data this office compiles and we cannot give the raw data to you to compile.
Sincerely, Nancy M. Mayer-Whittington

6. Bestor's immediate appeal dismissed as not a final decision of the district court appealable under 28 U.S.C. SS 1291.
United States Court of Appeals
For The District of Columbia
No. 03-5295 September Term 03cv01470
Filed On: March 19 2004
Andrew Bestor, Appellant
v.
Joseph Lieberman, et al., Appellees
Appeal From The United States District Court For The District of Columbia
Before: Ginsburg, Chief Judge, and Sentelle and Garland,

Circuit Judges
Judgment
This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. It is
ORDERED AND ADJUDGED that the appeal be dismissed for lack of jurisdiction. The district court's reassignment of appellant's civil action is not a final decision of the district court appealable under 28 U.S.C. SS 1291.
Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.
Per Curiam
[Initials]

7. Bestor also provides several documents showing the technology originated as part of the Central Intelligence Agency Neuroprosthetic/MKULTRA effort - Sidney Gottlieb, Subproject 119 – Texas Christian University. Bestor argues Roberts has significantly favored Bestor's assailants in the district court in failing to at all pursue information that could actually be used to show the neuroprosthetic is/was in Bestor's skull and brain, or better yet image or remove the neuroprosthetic.

A. Research proposal to [redacted] July 1, 1959
"For the past nine years I have maintained a continuing interest in certain problems in electroencephalography, which have both psycho-physiological and medical application…

In the course of this work, several electronic analyzers were built with [redacted] and provided impressive results despite their crudeness and obvious limitations.

These instruments are basically frequency analyzers which provide information concerning the total amount of electrical activity recorded for a single channel, during a ten second epoch, by frequency bands....
In my opinion the development of an adequate multi-channel electronic analyzer for electronic signals from the brain and other human organism is one of the most important needs in the field today...
Two developments within the past few years have spurred my interest in this problem. One was the demonstration that EEG records could be recorded on magnetic tape with high fidelity by means of frequency modulation techniques. The second was the fact that electronic scientists have developed excellent [word not clear – looks like 'quantitative'] techniques for analyzing and interpreting electrical signals obtained by telemetry from rockets and satellites used in ballistic missiles and space programs...

B. [Letter of] September 10, 1959
Dear [redacted],
We were delighted with your recent visit and the opportunity to discuss research plans and areas of mutual interest...

As we visualize the task, it should begin with a general survey of research and instrumentation in a number of fields...

It appears that about mid-way through the study, a conference may be valuable to discuss the material accumulated and the problems formulated, as a guide to future research and development....
The divisions of the problem fall naturally into five main areas:
(1) bioelectric sensors: sources of significant electrical potential and methods of pick-up;
(2) recording: amplification, electronic tape and other multi-channel recording;

(3) analysis: autocorrelators, spectrum analyzers, etc. and coordination with automatic data processing equipment,
(4) standardization of data for correlation with biochemical, physiological and behavioral indices;
(5) technics of activation of the human organism by remote electronic means...

C. DRAFT/
17 August 1960
MEMORANDUM FOR: THE RECORD
SUBJECT: MKULTRA, Subproject 119
1. The purpose of this subproject is to provide funds for a study conducted by [redacted] to make a critical review of the literature and scientific developments related to the recording, analysis and interpretation of bioelectric signals from the human organism, and activation of human behavior by remote means. When initiated this study was being done on a consultant basis by ['Saul Sells' handwritten in over redacted typing]. The reason for converting this into a Subproject is to provide more flexibility in the disbursal of funds for various kinds of assistance and equipment needed....
4. The cost of this project will be $6,370, including $2,500 already allotted [redacted] as a consulting fee, for one year beginning 1 July 1960....Charges should be made against Allotment 1525-1009-1902. [A single document eliminates one digit making the charge number 125-1009-1902].
5. Saul Sells and others at Texas Christian University who may become associated with the project will be completely unwitting of Sponsor.

[Signature on THIS document is redacted, but subsequent document in sequence is from SIDNEY GOTTLIEB, Deputy Chief, TSD/Research Branch].

(1)

03-1657

No:

Supreme Court, U.S.
FILED
JUN 2 9 2004
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

Andrew Bestor

Petitioner

v.

Joseph Lieberman et al.

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals for the District of Columbia

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UNIFIED SUPPLEMENTAL BRIEF / REPLY BRIEF

Andrew S. Bestor appearing *pro se*
144 11th St. SE, No. 4
Washington D.C. 20003
(202) 320-3638

1. On the propriety of hearing the reassignment matter, two authorities and their progeny stand out: *Republic Natural Gas Co. v. Oklahoma* 344 U.S. 62, 68 S.Ct. 972, 92 L. ed. 1212 (1948) – No self-enforcing formula defining when a judgment is "final" can be devised (92 L. ed. 1219) - and *Cohen v. Beneficial Industrial Loan Corp* 337 U.S. 541, 69 S.Ct. 1221, 93 L.ed. 1528 (1949) – Thus a "practical rather than a technical construction" standard has been adapted for the purpose of identifying those judgments which are final and which are not (cited in *District of Columbia v. Tschudin*, D.C. App., 390 A.2d at 988). In the District of Columbia:

> In determining final order, pertinent needs of judicial process must also be considered, and expense and delay of piecemeal litigation must be balanced with need for just adjudication of individual rights. *Dameron v. Capital House Associates LTD* 431 A.2d 580 citing back to *Republic* at 586.
>
> In determining finality of order or judgment for purposes of appeal, court takes into consideration "not merely those interests of the immediate parties but, more particularly, those interests which pertain to the smooth functioning of the judicial system." D.C.C.E. 11-721(a)(1). Cited in *Trilon Plaza Co. v. Allstate Leasing Corporation* 399 A.2d 34, originating in *District of Columbia v. Tschudin*, D.C. App., 390 A.2d 986, 988 (1978), quoting *Republic* 1220.
>
> On which side of the line, however faint and faltering at times, dividing judgments that were deemed "final" from those not found to be so, does the judgment before us fall. *Republic* 92 L. ed. 1220.

From *Trilon P' za*; The principals underlying these decisions have been succinctly stated by the Supreme Court in a decision construing Title 28 U.S.C. 1291 which provides for appeal "from all final decisions of the district courts":

> The effect of the statute is to disallow appeal from any decision which is tentative, informal, or incomplete. Appeal gives the upper court a power of review, not one of intervention. So long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal.
> *Cohen at 1536 cited in Trilon Plaza, which continues:*
> Nor does the statute permit appeals [from orders] where they are but steps toward final judgments **in which they will merge** (Bestor emphasis).

This is exactly the point of Bestor's second question, claiming the issues between Bestor and the judge [literally, the threatened reassignment] are hugely disparate from the issues between Bestor and the defendants. THEY NEVER MERGE. The only way the issues would possibly merge is in a 372(c) action, or in some scenario where this Court forced pro se litigants to caption the judge in 42:1986 litigation as a device to avert a particular jurist, but Bestor claims both those possibilities are hugely diminishing to pro se litigants generally.

Frankfurter wrote *Republic* [natural gas, Oklahoma], and at 92 L. ed. 1221 discusses the many excellent reasons, issues, or factors to be considered in **avoiding** fragmentary review of that case – eminent domain case, rate fixing case, and condemnation devices among them. The matter at hand has none of that complexity. Zero. **The practical rather than technical construction standard has been adapted.**

Petitioner's Reply Brief

1. On discovering the District Court for the District of Columbia has repeatedly changed the Local Rules concerning reassignments by the Calendar Committee across the time period of this litigation Bestor hastens to file this brief outlining the situation as best he can.

Rules	***Reassignment***
Aug 01, 1999	Individual judge's decision appealable to the Calendar Committee within 3 days.
May 31, 2002	"As amended, the Rule would make the individual judge's decision final." *Reassignment Order July 15, 2003.* *Plaintiff's Opposition July 17, 2003.*
Sep 01, 2003	Appeal procedure changed back to approaching the Calendar Committee within 3 days. [as best Bestor can reconstruct Rule]
Mar 08, 2004	Website updated, the current Rule is referral to the Calendar Committee but without a time limit specified.

2. Bestor properly acts under the Rule of May 31 2002, and goes so far as to suggest that when challenged the District Court changed the rules [repeatedly, suspecting they were apprehended by a higher judge and forced into the revision of March 8, 2004] which may diminish future claims but certainly not Bestor's. The specter of a District Court modifying Local Rules intending to diminish a particular litigant's appeals before a higher court must be profoundly disturbing. Of course Bestor is absolutely

outraged, claiming that, in light of serial modifications to Local Rules, Roberts' failure to answer Bestor's repeated motions attempting to avert the reassignment certainly appears deliberate – part and parcel with the raging 42:1986 offenses which surround Bestor on an ongoing basis. In fact, '*not answering*' leads Bestor to suspect Roberts was intending to simply dismiss Bestor's Complaint, which could be and probably should be an important part of any 372(c) action, but Bestor's immediate argument is that the District Court's hopscotch with the Rules should considerably broaden his Petition before this Court into issues of basic fairness. Surely changing the Rules midstream must ultimately raise some kind of *Hudson* argument [or *Ham*] in the District of Columbia.

3. The plethora of associated rules and documentation is confusing to the pro se litigant.

> Note 5 at 630 in *Ham v. Smith* 653 F.2d 628 (D.D.C. 1981)
>
> ...While the law clerk's letter cautioned Ham that he should respond to the government's motion promptly, we do not believe it met the standard prescribed by *Hudson*... A general warning does not have the immediacy of a specific warning accompanying motion papers. More important, the law clerk's letter did not explain.... [**in that case** the nature of the summary judgment to Ham, nor did it inform him that a failure to respond to a summary motion might result in the entry of a judgment against him; **here** the repeated Rules changes, either pending or enacted].

Of course the Local Rules of the moment should be included on the written notification of the reassignment, but Bestor claims beyond that at least **his** extenuating circumstances should automatically enlarge the 28 USC 1291 jurisdiction of

the Appeals Court. The essence of the situation is a process question.

Ham cited extensively from *Hudson v. Hardy*, 412 F.2d 1091 (D.C. Cir. 1968),

> We hold that before granting summary judgment against an appellant, the District Court, "as a bare minimum" should give the plaintiff "fair notice of the summary judgment rule." *Id* at 1094.

The district court does notify pro se litigants of the summary judgment issue under *Fox v. Strickland* and specifies a time period in which the litigant can respond. The district court also notifies pro se litigants of reassignments, but without designating any appeal or response process/time period. How much harder would it be to include mention of the appeal process – if one happens to exist at the given moment? Tough to characterize that as burdensome or as an unfunded mandate when the court already routinely sends the letter.

Bestor maintains he – subject to being radiated in the head and spied on instead of being exactly held prisoner – meets the criteria in *Cf. Tarantino v. Eggers*, 380 F.2d 465 (9th Cir. 1967) at 468 showing some consideration for the disadvantaged pro se litigant, which was cited in *Hudson* though it is a case from outside the district.

> ("When a pro se imprisoned plaintiff makes as prompt a response as can reasonably be expected... the strict time limits of [a local rule requiring response within five days] ought not be insisted upon").

Do the jail house defendants even have copies of the local rules? Since the clerk does not give out updated copies – *the Local Rules in the District of Columbia are conceptually web based* - is access to the world wide web now a right *as a matter of law* in the District of Columbia jail? The litigant who does not know *what has proven to be* 'an ephemeral

standard' in the District of Columbia is not going to be there.

4. It is possible others construe a rules issue in Bestor's responding to the reassignment with motions to the district court rather than inquiry at the clerk's counter in the Prettyman Court House or addressing the matter to the reassignment committee,

but Bestor points out both the actual defendants – one seated on the Senate judiciary Committee – and their consul – all real lawyers – failed to raise any rules issue both before the district court and on Appeal though they had plenty of opportunity to do so and have raised other 'targeted' or case specific arguments, and

Bestor suggests their omission illustrates the obscurity and dearth of precedent surrounding the reassignment issue.

5. Bestor wants a new judge to hear the matter and has shown a reasonable basis for his request. The defendants do not want the matter heard at all and previously made that very plain, but never opposed Bestor arguing against the reassignment or sought to support the judge the case was being reassigned to, indeed they – the defendants – in the course of nearly a full year have not made any particular argument opposing or supporting the reassignment.

6. (a) The reassignment was ordered by a committee or group other than either the judge originally assigned to the case at time of filing or the judge to whom the case would be reassigned. Bestor had a motion for Court Orders pending in the Court from time of filing, and Bestor claims some other authority meddling in the case would make him 'bifurcate' his motions.

(b) Though litigating in the district court for over two years, Bestor has yet to argue actually in front of a judge and obviously does not know how to go about getting there. In his first case, *Bestor v. United States* 02cv00279, the docket shows thirty five entries – none of which were sufficient to get Bestor in front of the judge - before his Complaint was

ultimately dismissed on a motion for summary judgment. That was such a circus with surveillance personnel both foreign and domestic Bestor's more recent legal attempts have involved fewer filings by design, yet at the same time that now seems to be held against him. It is certain Kirkland & Ellis and Roy Black or most any other professional law firm would be similarly striving but likely more successful at getting in front of a judge. Bestor therefore claims this reassignment – taking place in the absence of the litigant being able to appear before the new judge – was discriminatory [his certainly being unable to get in front of a judge versus the likelihood a real lawyer would be successful in the same undertaking].

(c) Presumably the committee reassigning the case did not have the authority to grant Bestor's Court Orders [or if they did that was never made clear – Calendar Committee as an appeal venue], and Bestor would argue that as a cause for preventing them from interfering in the matters he brought to the district court.

7. As importantly, Bestor suggests at least in this case, with the one party clearly alleging serious ongoing assault, at some point failing to raise the rules issue became preclusionary.

Given that the same judge had promptly responded to a request of a similar nature in a previous case [Bestor attempting to instigate a reassignment in *Bestor v. Ashley* 02-01538 (motioned 8/28/2002 and denied 9/5/2002) which Bestor cites fully at p. 32 **Appendix 3** of his Petition] this Court must forgive any misunderstanding on the part of the pro se litigant.

8. Again, as Bestor brought an internal security issue to this Court's attention in previous filings [*Bestor v. United States*, 02-1539 Petition for Rehearing under Rule 44. para. 2., page 12] there appears to be a leak today – Bestor filing his Petition here on June 16 with the surveillance

mechanisms sharing awareness [and showing great confidence of prevailing] on June 17 2004. Presumably the Justices met and discussed the matter – *there appears to have been an opportunity involving a conference over a death penalty in Maryland.* While Bestor appreciates the prompt consideration he again claims the leakage *particularly given foreign assailants involvement in these matters* is ultimately diminishing the majesty of the Court.

9. Media sources note Justice Breyer is heading a commission which will examine the federal judiciary, and conceptually – *given a broad situational awareness in Prettyman Courthouse and on Capital Hill* - this might be an excellent 'test case' for that panel to examine.

The problem is that Justice Breyer previously participated in utilizing the neuroprosthetic technology in question to harass Bestor with an induced audio sequence at the time of Bestor's *Petition for Certiorari* on Third Amendment grounds in 2003. Substantially contributing to the carnival atmosphere which surrounds radiating, threatening, and diminishing Bestor, Bestor claims that was knowingly and pointedly done [worse, for the very same reason Asians beyond Japanese join in harassing Bestor – participating represents validation in the group, and collective action dilutes any possible response]. Bestor needed four justices for his case to be heard – clearly Justice Breyer was not going to be one of them but surely he could have confined his labors to the typical conference in which all the justices participate.

The effect was Breyer dismissing Bestor's Third Amendment effort without identifying what the shortcoming was. Undoubtedly a learned man, Bestor wonders if Breyer has ever heard a Third Amendment case – certainly no member of this Court has ever published an opinion on one reported in the Federal Register. Claiming his Petition was in fact a reasonable petition given the length restriction – an

entirely new field of constitutional law in thirty pages or less [in-so-far as extensions are rarely granted] – Bestor points out that Petition should not have been held to the standards of a brief [though it is obviously too late for Bestor to reargue Third Amendment issues now – unless it isn't given Justice Breyer's previous misbehavior]. Very possibly instigated by men who are defendants here or associates of defendants here, Bestor thinks Breyer should excuse himself from further discussion and arguments involving Bestor, but the whole sordid point further convinces Bestor formal open court is the proper venue for these matters.

10. That Local Rules were repeatedly modified suggests indecision among a majority of judges on the District of Columbia circuit. Their ultimate decision was that reassignment definitely is an appealable decision. The possibility Local Rules were modified trying to diminish Bestor's appeal is certainly offensive, but on the other hand 'what the hell.' Thank God this is downtown Washington D.C. where the District Court and the Appeals Court are located in the same building with this Court but a short distance up the hill, and once discovered the situation can be easily corrected,

> "Did you really modify the Local Rules to get around Bestor's litigation?"...[Yes]..."Well that was childish....."

as opposed to the Eastern District of Kentucky or some remote region where such offences may pass as routine. At least somebody on the Appeals Court did make them dance with it, or so it would appear – are they intending to revert to the three day rule when Bestor's litigation is resolved? Do other victimized litigants know that at least for the moment there is an open door 'they could drive a bus through' on the reassignment issue?

End of the day, Bestor claims the controversy including

over Rules [never previously raised], changes to the Rules, and 'Judge Roberts seemingly fueling the fire' is a compelling reason to avert the threatened reassignment as Bestor requested in his *Petition for Certiorari* and previously argued in the district and appeals courts – since July 2003 [now for a year].

After surveying related case law including *Republic Natural Gas Co. v. Oklahoma* 344 U.S. 62, 68 S.Ct. 972, 92 L. ed. 1212 (1948) and *Cohen v. Beneficial Industrial Loan Corp* 337 U.S. 541, 69 S.Ct. 1221, 93 L.ed. 1528 (1949) and observing the uncertainties which plague the federal system, Bestor believes this Court must hear him.

As Justice Powell observed in *Eisen v. Carlisle & Jacquelin* 94 S.Ct. 2140 (1974) at 2149 citing from *Cohen*,

> [the reassignment]was not "tentative, informal, or incomplete" [citation omitted]....Second, the decision did not constitute merely a "step toward final disposition of the merits of the case..." Rather, it concerned a collateral matter that could not be reviewed effectively on appeal from final judgment. The court summarized it's conclusion in this way: "This decision appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred while the whole case is adjudicated."

Respectfully submitted,

Andrew S. Bestor appearing *pro se*
144 11th St. SE, No. 4
Washington D.C. 20003
(202) 320-3638

(3)

SEP 2 1 2004
OFFICE OF THE CLERK

No: 03-1657

IN THE

Supreme Court of the United States

Andrew Bestor

Petitioner

v.

Joseph Lieberman et al.

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals for the District of Columbia

Supplemental Brief

Andrew S. Bestor appearing *pro se*
144 11th St. SE, No. 4
Washington D.C. 20003
(202) 320-3638

Petitioner's Supplemental Brief

Bestor was assaulted on the evening of August 13, 2004 [4th Street SW in Washington D.C., CCN#112-622 reported to Officer Geeter, M #1063], and based on visual indicators observed prior to the assault Bestor suspects the incident was related to a prior assault on Justice Souter April 30 2004, which was reported in the *Houston Chronicle*, May 2 2004, *Justice Souter assaulted while jogging on the street*, page 2, and other media sources.

In history it is *possible* Supreme Court justices have been assaulted related to litigation pending before them, but Bestor doubts it has happened in any other instance recently; surely this Court can not be blind to the path down which the orchestrated denials and feigned ignorance of government leads us.

Bestor acts to get a system of neuroprosthetics removed from his skull and brain, and related damages. It is not clear to him how or *why* others act (do they ask the courts support the installation and utilization of the neuroprosthetics, or do they merely cite technicalities inhibiting removal), but it is abundantly clear justice is being made a mockery of. In either preventing the reassignment of his case in the District of Columbia District Court or returning the matter to the Appeals Court for them to better define the criteria for appealing reassignment [given the definition of torture under *Price*, development of a *Price* test including the issue of leaving the ultimately debilitating torture mechanisms in the victim's skull and brain - which Bestor claims he could readily prove with the long requested MRI], Bestor is hopeful this Court will issue a written opinion for the good of Bestor **and** the federal judiciary, the profit of other litigants seeking to address or overcome such abhorrent circumstances, and the

betterment of society in addressing issues in torture, threats [here long unrecognized by what Bestor claims are deliberately obtuse federal agencies], and surveillance.

Respectfully submitted,

Andrew S. Bestor appearing *pro se*
144 11th St. SE, No. 4
Washington D.C. 20003
(202) 320-3638

Bestor *appears* to have lost some or all function in his left kidney but Souter is apparently okay.

Houston Chronicle, May 2 2004, *Justice Souter assaulted while jogging on the street*, page 2.
(Copyright 2004 *Houston Chronicle*)
WASHINGTON- Supreme Court Justice David Souter suffered minor injuries when a group of young men assaulted him as he jogged on a city street, a court spokesman and Metropolitan Police said Saturday.
The attack occurred about 9:00 p.m. Friday, and Supreme Court police took Souter, 64, to a Washington hospital, court spokeswoman Kathy Arberg said. He was examined and released about 1 a.m. Saturday.
Neither Arberg or police would detail the justice's injuries except to say they were minor. Nor would they give other details about the assault, except Arberg said Souter was not robbed.
Souter was running alone when he was attacked. He lives in a neighborhood not far from the Supreme Court building on Capital Hill, where the attack occurred.
Souter is among the youngest justices and is a regular jogger. He is not the first justice to be injured while exercising.

Justice Stephen Breyer was thrown from his bicycle several years ago and suffered minor injuries.
Souter was named to the bench by the first President Bush in 1990.